

Permit No.: NDR04-0000

Effective Date: January 1, 2003

Expiration Date: December 31, 2007

AUTHORIZATION TO DISCHARGE UNDER THE
NORTH DAKOTA POLLUTANT DISCHARGE ELIMINATION SYSTEM

In compliance with the provisions of the Clean Water Act, as amended, (33 U.S.C. 1251 et seq.; hereinafter, the "Act"), 40 CFR 122, 123, and 124, as amended, et seq.; Chapter 33-16-01 of the North Dakota Department of Health rules as promulgated under Chapter 61-28 (North Dakota Water Pollution Control Act) of the North Dakota Century Code,

Small Municipal Storm Sewer Systems both qualifying for and satisfying the requirements identified in Part II of this permit

are authorized to discharge storm water

to waters of the state

in accordance with the conditions set forth in this permit.

This permit and the authorization to discharge shall expire at midnight,

December 31, 2007.

Dennis R. Fewless, Director
Division of Water Quality

Date

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PART I. PERMIT GOALS

The primary goal of this permit is to restore and maintain the chemical, physical, and biological integrity of waters of the state through management and treatment of urban storm water runoff. This is accomplished by management of Municipal Separate Storm Sewer Systems (MS4s) through a Storm Water Pollution Prevention Program. The purpose is to maintain water quality standards where there is compliance, and help bring waters that do not meet water quality standards into attainment.

PART II. PERMIT COVERAGE

A. Eligibility

1. This permit applies to all areas within the jurisdiction of the state of North Dakota.
2. This permit authorizes discharges of storm water from Small Municipal Separate Storm Sewer Systems as defined in 40 CFR 122.26 (b)(16). The permit also authorizes storm water discharges from vehicle maintenance facilities, wastewater treatment plants, and construction activities involving less than 5 acres which are within the area served by the MS4 and owned or operated by the same public body owning or operating the small MS4 authorized by this permit.

B. Limitations on Coverage

1. This permit does not authorize discharges other than storm water. Non-storm water discharges may include: combined sewer overflow, noncontact cooling water, sewage, wash water, scrubber water, spills, oil, hazardous substances, fill, commercial equipment/vehicle cleaning and maintenance wastewaters. A separate NPDES permit may be required for these discharges.
2. This permit does not authorize the discharge of storm water when a separate NPDES permit is required for these activities. For example, while storm water from industrial activity or construction activity may be discharged from a MS4 with authorized storm water discharges, this permit does not replace or satisfy any other permits required for those discharges.
3. This permit does not authorize discharges from MS4s operated independently by other entities within or connected to the system described in your application. Authorization to discharge under this permit applies only to the storm sewer system (or portions of a system) that you operate and described in your application.
4. This permit does not authorize new or expanded discharges unless the following requirements are met:
 - a. A review and determination has been made in accordance with Appendix IV of the North Dakota Standards of Water Quality (NDAC 33-16-02) for activities that would result in a new or expanded source of pollutants to waters of the state. The project applicant is obligated to provide information about the affected water body and the proposed activity as part of the review process. The review requirements to determine that an activity will maintain and protect all uses and the water quality necessary to support the uses of the water body vary with the classification of the water body.
 - b. This permit does not replace or satisfy any environmental review requirements, such as the National Environmental Policy Act (NEPA). You must complete any environmental review required by law, including any required Environmental Assessment Work Sheets or Environmental Impact Statements, Federal environmental review, or other required review.

- c. This permit does not replace or satisfy any review requirements for Threatened or Endangered species, for discharges whose direct, indirect, interrelated, interconnected, or independent impacts would jeopardize a listed endangered or threatened species or adversely modify a designated critical habitat. You must conduct any required review and coordinate with appropriate agencies for any project with the potential of affecting threatened or endangered species, or their critical habitat.
- d. This permit does not replace or satisfy any review requirements for Historic or Archeological sites, for discharges which adversely affect properties listed or eligible for listing in the National Register of Historic Places or affecting known or discovered archeological sites. You must be in compliance with National Historic Preservation Act and conduct all required review and coordination related to historic preservation, including significant anthropological sites and any burial sites, with the appropriate agency(s).

C. Obtaining Authorization

In order for storm water discharges from Small Municipal Separate Storm Sewer Systems to be authorized to discharge under this general permit, a discharger must:

1. Submit an application with a summary of the Storm Water Pollution Prevention Program in accordance with the requirements of Part III.
2. Where the ownership or operational control of the MS4 changes significantly, or where a new owner of the MS4 is added after the submittal of an application under Part III, a new application must be submitted in accordance with Part III.
3. Unless notified by the Department to the contrary, dischargers who submit a complete application in accordance with the requirements of this permit are authorized to discharge storm water from Small Municipal Separate Storm Sewer Systems under the terms and conditions of this permit, on the issuance date of this permit. If the application is received after the issuance date, discharge is authorized on the date the application is received by the Department.
4. The Department may deny coverage under this permit and require submittal of an application for an individual NPDES permit based on a review of the application or other information.

PART III. APPLICATION REQUIREMENTS (Notice of Intent)

A. Deadlines for Notification

If you are an owner or operator of a regulated small municipal separate storm sewer system designated under 40 CFR § 122.32, you must apply for coverage under an NPDES permit by March 10, 2003. MS4s that are designated for coverage after January 1, 2003, will need to apply within 180 days of notification unless otherwise specified by the Department.

B. Content

The Application shall contain the following information:

1. The street address, and the name of the owner, agency or person with operational control of the MS4.

2. The name, address, and telephone number of the person responsible for overall permit compliance.
3. A brief description of the location of the MS4.
4. The name or general description of the water body(s), or other MS4s, that receive storm water from your MS4.
5. The location of transportation facilities with vehicle maintenance activities, public works maintenance yards and wastewater treatment works with a design flow of 1.0 mgd or greater.
6. The location and description of systems operated by other public entities within the MS4.

C. Summary

A summary of the Storm Water Pollution Prevention Program for implementing the permit shall be attached to the application, including:

1. The Best Management Practices (BMPs) that you will implement for each of the storm water minimum control measures at Part V, G. of this permit;
2. The measurable goals for the BMPs you plan to implement, including as appropriate, a description of the planned actions, timing and frequency of actions, and milestones;
3. Estimated schedule(s) (months, years) in which you will implement each Best Management Practice; and
4. Person(s) responsible for implementing and/or coordinating each component of the Phase II Storm Water Program. This should be the person(s) you want the Department to contact regarding the overall program or the particular components.

D. Where to Submit

Applications signed in accordance with the signatory requirements in Part VII.E (or as indicated on application forms), are to be submitted to the Department at the following address:

North Dakota Department of Health
Division of Water Quality
1200 Missouri Avenue
PO Box 5520
Bismarck, ND 58506-5520

PART IV. PERMIT ACTIONS

- A. The Department may modify this permit or issue other permits, as it deems necessary to protect water quality. The permits may include more stringent effluent limitations, including permit requirements that modify, or are in addition to, the minimum control measures.
- B. You may request individual permits by submitting an application in accordance with 40 CFR 122.33 and a description of why an individual permit would be necessary.

- C. Section 303(d) listings and Total Maximum Daily Load (TMDL) implementation plans. If your MS4 discharges to a water of the state that appears on the current USEPA-approved list of impaired waters under Section 303(d) of the Clean Water Act, you must review whether changes may be warranted in your Storm Water Pollution Prevention Program to reduce the impact of your discharge. If an implementation plan has been developed for a USEPA-approved TMDL(s), you must review the adequacy of your Storm Water Pollution Prevention Program to meet the TMDL's load allocation set for storm water sources. This review must include assessment of: 1) your MS4's contribution to the overall storm water allocation, 2) your MS4's selected BMPs and their effectiveness in meeting the TMDL's allocation goal, and 3) whether your schedule for putting BMPs in place is consistent with the schedule of the TMDL implementation plan. If the Storm Water Pollution Prevention Program is not meeting the applicable requirements, schedules and objectives of the TMDL implementation plan, you must modify your Storm Water Pollution Prevention Program, as appropriate.

PART V. STORM WATER POLLUTION PREVENTION PROGRAM

- A. You must develop, implement and enforce a Storm Water Pollution Prevention Program designed to reduce the discharge of pollutants from your small municipal separate storm sewer system, to the maximum extent practicable (MEP) to protect water quality, and to satisfy the appropriate water quality requirements of the Clean Water Act. The Storm Water Pollution Prevention Program will consist of a combination of Best Management Practices (BMPs), including education, maintenance, control techniques, system design and engineering methods, and such other provisions as you determined to be appropriate, to meet the minimum requirements of this permit. You must develop and implement your program within five (5) years from the date you are required to obtain a permit for your small MS4.
- B. Implementation of one or more of the minimum measures may be shared with another entity, or the entity may fully take over the measure. The agreement outlining such an arrangement must be maintained as part of the description of your storm water pollution prevention program.
- C. You must submit an annual report, as outlined in Part VI.D., on the implementation of the Storm Water Pollution Prevention Program by March 31 of each year, or on another date if established for your MS4 by the Department.
- D. Your Storm Water Pollution Prevention Program must include BMPs that control or reduce pollutants, as appropriate for your community. In the development of BMPs for your Storm Water Pollution Prevention Program, you must consider the sources of pollutants, the potentially polluting activities being conducted in the watershed, and the sensitivity of the receiving waters.
- E. For each minimum control measure, there shall be a description of the BMPs for the measure, responsible department in charge, an implementation schedule and measurable goals that will be used to determine the success or benefits of the BMPs.
- F. The Storm Water Pollution Prevention Program shall become an enforceable part of this permit upon receipt of the complete application for coverage under this permit by the Department. Modifications to the Storm Water Pollution Prevention Program that are required or allowed by this permit shall also become enforceable provisions.
- G. The six minimum control measures to be included in your Storm Water Pollution Prevention Program are listed below. You must define appropriate BMPs for these minimum control measures and measurable goals for each BMP.

1. **Public education and outreach on storm water impacts.** You must select and implement a program of appropriate BMPs and measurable goals for this minimum control measure. At minimum:
 - a. You must implement a public education program to distribute educational materials to the community or conduct equivalent outreach activities about the impacts of storm water discharges on water bodies and the steps that the public can take to reduce pollutants in storm water runoff.
 - b. An education program must also be individually addressed under the Minimum Control Measures listed below (Parts V, G. 3 through 6):

Measure 3 - Illicit discharge detection and elimination;
Measure 4 - Construction site storm water runoff control;
Measure 5 - Post-construction storm water management in new development and;
Measure 6 - Pollution prevention/good housekeeping for municipal operations.
 - c. The public education program, and each education program under the Minimum Control Measures listed above, must identify the following:
 - 1) The audience or audiences involved;
 - 2) Educational goals for each audience in terms of increased awareness, increased understanding, acquired skills, and/or desired changes in behavior;
 - 3) Activities used to reach educational goals for each audience;
 - 4) Activity implementation plans, including responsible department in charge, entities responsible for given activities, and schedules; and
 - 5) Available performance measures that can be used to determine success in reaching educational goals.
 - d. We recommend that you describe how your education program is coordinated with and makes effective use of other storm water education programs being conducted in your area by other entities as appropriate for your MS4, including, but not limited to: community groups, nonprofit organizations, lake conservation districts, soil and water conservation districts, watershed districts, watershed management organizations, school districts, university outreach and extension, and county, regional, state, and federal government.
 - e. You must hold at least one public meeting per year addressing the Storm Water Pollution Prevention Program annual report. You must hold the public meeting prior to submittal to the Department of the annual report.
 - 1) Location. The public informational meeting must be held in the general vicinity of the MS4, which is the subject of the permit. Otherwise, the public informational meeting must be held in a place that is generally convenient to persons expected to attend the meeting.
 - 2) Notice. You must prepare a notice of the public informational meeting at least 30 days prior to the meeting. The notice must contain a reference to the Storm Water Pollution Prevention Program, the date, time, and location of the public informational meeting; a concise description of the manner in which the public informational meeting will be conducted; and shall indicate where a copy of the Storm Water Pollution Prevention Program is available for public review.

- 3) Distribution of notice. You must publish the notice in a newspaper of general circulation in the general vicinity of the MS4, and shall make available a copy of the notice to the Agency, the appropriate city and county officials, and all other persons who have requested that they be informed of public meetings for the Storm Water Pollution Prevention Program.
 - 4) Joint meetings. You may consolidate two or more matters, issues, or related groups of issues, or hold joint MS4 public meetings with other permittees to meet the requirements of this part. These public meetings may be part of a larger public meeting, such as a city council meeting, provided that adequate public notice and opportunity to participate is provided.
2. **Public participation/involvement.** You must select and implement a program of appropriate BMPs and measurable goals for this minimum control measure. At minimum:
- a. You must comply with applicable public notice requirements of Part V, G.1.e.2 when implementing the provisions of the Storm Water Pollution Prevention Program.
 - b. You must get public input and opinion on the adequacy of the Storm Water Pollution Prevention Program, including input from the public meeting, described in Part V, G.1.e., each year prior to submittal of the annual report to the Department, which is described in Part VI, C.
 - 1) You must afford interested persons a reasonable opportunity to make oral statements concerning the Storm Water Pollution Prevention Program.
 - 2) You must consider timely, relevant written materials that interested persons submit concerning the Storm Water Pollution Prevention Program.
 - 3) You may establish procedures and processes for each speaker's presentation, require speakers with similar views to select a spokesperson, specify the timing and format of written materials or make similar rules, to help ensure an opportunity for full and fair consideration of all views.
 - c. You must consider the public input, oral and written, to the Storm Water Pollution Prevention Program and shall make adjustments you find appropriate.
3. **Illicit discharge detection and elimination.** You must develop, implement and enforce a program to detect and eliminate illicit discharges as defined at 40 CFR 122.26(b)(2) into your small MS4. You must also select and implement a program of appropriate BMPs and measurable goals for this minimum control measure. At minimum:
- a. You must develop, if not already completed, a storm sewer system map showing the location of:
 - 1) Ponds, streams, lakes and wetlands that are part of your system;
 - 2) Structural pollution control devices (grit chambers, separators, etc.) that are part of your system;
 - 3) All pipes and conveyances in your system, as a goal--but at minimum--those pipes that are 24 inches in diameter and over;
 - 4) Outfalls, including discharges from your system to other MS4s, or waters and wetlands that are not part of your system (where you do not have operational control); structures that discharge storm water directly into groundwater; overland discharge points and all other points of discharge from your system that are outlets, not diffuse flow areas.

- b. You must, to the extent allowable under law, effectively prohibit, through ordinance or other regulatory mechanism, non-storm water discharges into your storm sewer system and implement appropriate enforcement procedures and actions;
- c. You must develop and implement a program to detect and address non-storm water discharges, including illegal dumping, to your system;
- d. You must inform employees, businesses, and the general public in your MS4 area of hazards associated with illegal discharges and improper disposal of waste;
- e. You must address the following categories of non-storm water discharges or flows (i.e., illicit discharges), only if you identify them as significant contributors of pollutants to your small MS4:

water line flushing, landscape irrigation, diverted stream flows, rising ground waters, uncontaminated ground water infiltration (as defined at 40 CFR 35.2005(20)), uncontaminated pumped ground water, discharges from potable water sources, foundation drains, air conditioning condensation, irrigation water, springs, water from crawl space pumps, footing drains, lawn watering, individual residential car washing, flows from riparian habitats and wetlands, dechlorinated swimming pool discharges, and street wash water, discharges or flows from fire fighting activities.

- 4. **Construction site storm water runoff control.** You must develop, implement, and enforce a program to reduce pollutants in any storm water runoff to your small MS4 from construction activities within your jurisdiction that result in a land disturbance of greater than or equal to one acre. Reduction of pollutants in storm water discharges from construction activity disturbing less than one acre must be included in your program, if that construction activity is part of a larger common plan of development or sale that would disturb one acre or more. You must also select and implement a program of appropriate BMPs and measurable goals for this minimum control measure, at minimum:
 - a. An ordinance or other regulatory mechanism to require erosion and sediment controls, as well as sanctions to ensure compliance, to the extent allowable under law. These ordinances or regulatory mechanisms must be in place by March 11, 2005;
 - b. Requirements for construction site operators to implement appropriate erosion and sediment control best management practices;
 - c. Requirements for construction site operators to control waste, such as discarded building materials, concrete truck washout, chemicals, litter, and sanitary waste at the construction site that may cause adverse impacts to water quality;
 - d. Procedures for site plan review which incorporate consideration of potential water quality impacts;
 - e. Procedures for receipt and consideration of reports of non compliance or other information on construction related issues submitted by the public, and
 - f. Procedures for site inspection and enforcement of control measures.
 - g. You must operate your construction sites in accordance with your Storm Water

Pollution Prevention Program. Storm water discharges from small construction activity you own or operate is authorized by this permit only when the conditions of this section are followed. "Small Construction Activity" involves land disturbance of equal to or greater than one acre and less than five acres. Small construction activity also includes the disturbance of less than one acre of total land area that is part of a larger common plan of development or sale, if the larger common plan will ultimately disturb equal to or greater than one and less than five acres. You must develop site specific plans or a system to evaluate and implement appropriate BMPs for your small construction activities, that must include:

- 1) Description of the activity, proposed timetable, amount of area disturbed, and any outfalls to the storm sewer or a water body;
- 2) Map or drawing of the site showing the site boundaries, soil disturbance limits, storm water drainage pattern, location of receiving waters and/or storm inlets, storage areas for materials, and storm water controls;
- 3) A description of the method of storage, disposal and handling of materials which have the potential to be released with storm water;
- 4) A description of the BMPs to control erosion and sediment during various phases of construction;
- 5) A description of methods to address sediment tracking on roads, recovering sediments, spill prevention and response procedures;
- 6) Site inspection procedure providing for at least one inspection every 14 days and within 24 hours after any storm event of greater than 0.50 inches of rain per 24-hour period unless prevented due to adverse conditions such as flooding, snow cover, high winds, electrical storms, etc.;
- 7) A Site Inspection Record (SIR) shall be kept that contains the date and time of inspections, the name of the person performing the inspection, the date and amount of last precipitation event. All incidents of erosion, sediment accumulation, or spills shall be documented and noted on the SIR. The record shall include the location and description of the incident, estimated quantity of material or size of area affected, and a brief explanation of potential cause and remedial action taken.

5. Post-construction storm water management in new development and redevelopment.

You must develop, implement, and enforce a program to address storm water runoff from new development and redevelopment projects within your jurisdiction that disturb greater than or equal to one acre, including projects less than one acre that are part of a larger common plan of development or sale, that discharge into your small MS4. Your program must ensure that controls are in place that would prevent or minimize water quality impacts. You must also select and implement a program of appropriate BMPs and measurable goals for this minimum control measure. At minimum:

- a. Develop and implement strategies which include a combination of structural and/or non-structural best management practices (BMPs) appropriate for your community;
- b. Use an ordinance or other regulatory mechanism to address post-construction runoff from new development and redevelopment projects to the extent allowable under law; and
- c. Ensure adequate long-term operation and maintenance of BMPs installed as a result of these requirements.

6. **Pollution prevention/good housekeeping for municipal operations.** You must develop an operation and maintenance program to prevent and reduce storm water pollution from municipal operations. You must select and implement a program of appropriate BMPs and measurable goals for this minimum control measure. At minimum:
- a. You must develop and implement a training component for your operation and maintenance program aimed at preventing or reducing pollutant runoff from municipal operations such as park and open space maintenance, snow disposal, fleet and building maintenance, new construction and land disturbances, and storm water system maintenance. Training materials that are available from the USEPA, state and regional agencies, or other organizations may be used as appropriate or modified for your community.
 - b. As part of your operation and maintenance program, you must also:
 - 1) Operate and maintain your storm water system in a manner so as to minimize the discharge of pollutants.
 - 2) Inspect annually all structural pollution control devices, such as trap manholes, grit chambers, sumps, floatable skimmers and traps, separators, and other small settling or filtering devices.
 - 3) Inspect, at minimum, 20% of the MS4 outfalls, snow disposal areas, sediment basins and ponds each year on a rotating basis.
 - 4) Based on your inspection, determine if repair, replacement, or maintenance measures are necessary for proper operation and to prevent environmental impacts such as erosion. The necessary measures shall be completed as soon as possible, usually during the same year as the inspection. When this is not practicable, the reasons and a schedule for completion shall be submitted in the annual report.
 - 5) Summarize the results of outfall inspections in the annual report and include the dates of inspection and the date of completion of major additional protection measures.
 - 6) Keep records of inspection results, date, antecedent weather conditions, sediment storage and capacity remaining, and any maintenance performed or recommended. After two years of inspections, if patterns of maintenance become apparent, the frequency of inspections may be adjusted. If maintenance or sediment removal is required as a result of each of the first two annual inspections, the frequency of inspection shall be increased to at least two (2) times annually, or more frequently as needed to prevent carry-over or washout of pollutants from the structures and maximize pollutant removal. If maintenance or sediment removal is not required as a result of both of the first two annual inspections, the frequency may be reduced to once every two years.
 - 7) Provide for the enclosure or covering of your salt storage piles, including salt treated sand, used for winter road deicing to prevent exposure to precipitation. Salt storage piles do not need to be covered or enclosed when adding to or taking materials from the pile and when storm water drainage from the pile is contained on-site. Also as part of winter operations, avoid locating snow disposal sites in areas that do not provide a buffer or other means of minimizing the contribution of pollutants to waters of the state.

- c. You must operate any of your vehicle maintenance facilities and wastewater treatment plant(s) in accordance with your Storm Water Pollution Prevention Program. In addition, you must develop and implement site specific plans for your vehicle maintenance facilities and wastewater treatment plants having a design capacity of 1.0 mgd or more within 90 days of obtaining coverage under this permit. If you have a separate permit for these activities, you may continue coverage under that permit and omit the plan described in this section. The site plans must include, at a minimum:
- 1) A site map indicating drainage patterns, the outline of the drainage area for each storm water outfall, areas used for storage or disposal of materials, and any existing structures to reduce storm water contamination. Clearly identify property boundaries and storm sewer inlets or surface waters receiving drainage.
 - 2) A list of significant materials that may be exposed to or may contact storm water. For each material, identify the method and location for storage, disposal and outdoor processing.
 - 3) A description of any BMPs and/or structural controls currently used to minimize the contact of storm water with materials or reduce pollutants in storm runoff.
 - 4) An assessment of the potential for various sources at the site to contribute pollutants to storm runoff (i.e., loading/unloading operations, outdoor storage, disposal activities, dust generating activities, etc.). Factors to consider are the nature and quantity of material, degree of exposure, history of spills or leaks, and any measures in place to control storm water.
 - 5) The site shall be evaluated for the presence of non-storm water discharges. Any non-storm water discharge from the site must be removed or controlled as outlined in your illicit discharge program.
 - 6) A description of BMPs which will be implemented to minimize potential contributions from pollutant sources. The site specific plan must include BMPs to minimize storm water contact with materials at the site, spill prevention and response procedures, and sediment/erosion controls for areas vulnerable to erosion.
 - 7) A site inspection schedule to ensure the controls described in the plan are being implemented and are adequate. The site shall be inspected annually for evidence of non-storm related discharges, deterioration, or ineffectiveness of structural controls and overall effectiveness of management practices identified in the plan.
 - 8) A record keeping procedure to document incidents, such as discharges, spills, inspections, and maintenance on BMPs. A record of inspections shall summarize the scope of the inspection, major observations, the date and the name of person making the inspection. If necessary, the site plan shall be revised based on the observations and deficiencies noted during the inspection.

H. Modifications to the Storm Water Pollution Prevention Program

1. The Department may require you to modify the Storm Water Pollution Prevention Program as needed, and may consider the following factors:
 - a. Discharges from the storm sewer system are impacting the quality of receiving waters;
 - b. More stringent requirements are necessary to comply with new state or federal regulations; or
 - c. Additional conditions are deemed necessary to comply with the goals and requirements of the Clean Water Act.
2. Modifications required for your Storm Water Pollution Prevention Program shall be requested by the Department in writing, setting forth schedules for compliance, offering you the opportunity to propose alternative program modifications, and comply with other requirements of law, to meet the objectives of the requested modification.

3. The Storm Water Pollution Prevention Program may be modified by you without prior approval of the Department, provided it is in accordance with the following:
 - a. A BMP is added, and none subtracted, from the Storm Water Pollution Prevention Program;
 - b. A less effective BMP identified in the Storm Water Pollution Prevention Program is replaced with an alternate BMP. The alternate BMP shall address the same, or similar, concerns as the ineffective or failed BMP; and
 - c. The Department is notified of the modification in the annual report for the year the modification is made.

PART VI. EVALUATING, RECORDKEEPING AND REPORTING

A. Evaluation and assessment.

You must evaluate program compliance, the appropriateness of your identified best management practices, and progress towards achieving your identified measurable goals.

B. Recordkeeping and Record Retention.

You must keep records required by the NPDES permit for at least 3 years beyond the term of the permit. You must submit your records to the Department only if specifically asked to do so.

The applicant shall retain copies of the permit application, all data and information used by the applicant to complete the application, and additional information requested by the Department during the review of the application for a period of at least three years beyond the date of permit expiration. This period is automatically extended during the course of an unresolved enforcement action regarding the facilities or as requested by the Department.

C. Public availability

You must make your records, including your Storm Water Pollution Prevention Program, available to the public at reasonable times during regular business hours (see 40 CFR 122.7 for confidentiality provision). You may assess a reasonable charge for copying. You may require a member of the public to provide advance notice.

D. Annual report

Your annual report must summarize:

1. The status of compliance with permit conditions, including an assessment of the appropriateness of your identified best management practices and progress towards achieving your identified measurable goals for each of the minimum control measures. Your assessment must be based on results of information collected and analyzed, including monitoring (if any), inspection findings, and public input received during the reporting period;
2. The storm water activities you plan to undertake during the next reporting cycle;
3. A change in any identified best management practices or measurable goals for any of the minimum control measures; and
4. Notice that you are relying on another entity to satisfy some of your permit obligations (if applicable).

5. A list of the locations where you operated small construction activity during the reporting cycle. If you have a separate permit for small construction, you may provide the permit number for that permit and omit this part from the report. The location record shall include, at a minimum:
- a. Name of each small construction site
 - b. Location of each site (street address, latitude and longitude, or legal land description of township, range, section, and 1/4 section)
 - c. Start date of each site
 - d. The estimated area of total disturbance in acres of each site
 - e. Status of each site (in progress, grading complete, final stabilization date)

E. Reporting submittals.

You must submit annual reports to the Department by March 31, for each year of your permit term. The reports shall be submitted to:

North Dakota Department of Health
Division of Water Quality
1200 Missouri Avenue
PO Box 5520
Bismarck, ND 58506-5520

PART VII. STANDARD CONDITIONS

- A. **Duty to Comply.** The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Act and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application. The permittee shall give the Department advance notice of any planned changes at the permitted facility or of any activity which may result in permit noncompliance.
- B. **Operation and Maintenance.** The permittee shall at all times maintain in good working order, and operate as efficiently as possible, all treatment or control facilities or systems installed or used by the permittee to achieve compliance with the terms and conditions of this permit and with the requirement of the SWPP program. If necessary to achieve compliance with the conditions of this permit, this shall include the operation and maintenance of backup or auxiliary systems. You must manage, operate, and maintain the storm sewer system and areas you control that discharge to the storm sewer system in a manner to minimize the discharge of pollutants.
- C. **Duty to Provide Information.** The permittee shall furnish to the Department, within a reasonable time, any information which the Department may request to determine whether cause exists for requiring coverage under an alternative permit or to determine compliance with this permit. The permittee shall also furnish to the Department, upon request, copies of records required to be kept by this permit. When a permittee becomes aware that it failed to submit any relevant facts or submitted incorrect information in a permit application or any report, it shall promptly submit such facts or information.
- D. **Records Retention.** All records and information (including calibration and maintenance) required by this permit shall be kept for at least three years or longer if requested by the Department or EPA.

- E. **Signatory Requirements.** All applications, reports or information submitted to the Department shall be signed and certified.
1. All permit applications shall be signed by a responsible corporate officer, a general partner, or a principal executive officer or ranking elected official.
 2. All reports required by the permit and other information requested by the Department shall be signed by a person described above or by a duly authorized representative of that person. A person is a duly authorized representative only if:
 - (a) The authorization is made in writing by a person described above and submitted to the Department; and
 - (b) The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility, such as the position of plant manager, superintendent, position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters.

If an authorization, under paragraph 2 above, is no longer accurate for any reason, a new authorization satisfying the above requirements must be submitted to the Department prior to or together with any reports, information, or applications to be signed by an authorized representative.

Any person signing a document under this section shall make the following certification:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted herein. Based on my inquiry of those individuals immediately responsible for obtaining the information, I believe the submitted information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information including the possibility of fine and imprisonment."

- F. **Immediate Notification.** The permittee shall report any noncompliance or discharge which may seriously endanger health or the environment as soon as possible, but no later than twenty-four (24) hours from the time the permittee first became aware of the circumstances. The report shall be made to the EPA, Region VIII, Emergency Response Branch at (303) 293-1788 and the State of North Dakota, Division of Emergency Management at (701) 328-2121. In addition, a written submission to both the Department and EPA shall be provided within five days of the time that the permittee became aware of the circumstances. The submission shall contain a description of the noncompliance and its cause; the period of noncompliance, including exact dates and times; the estimated time noncompliance is expected to continue if it has not been corrected; and steps taken or planned to reduce, eliminate, and prevent recurrence of the noncompliance.
- G. **Bypassing.** Any bypass is prohibited except where unavoidable to prevent loss of life, personal injury, or severe property damage and there were no feasible alternatives to the bypass. The permittee shall provide notification of unanticipated bypasses as may be required by the condition for "Immediate Notification". If, for other reasons, a bypass is considered necessary, a request to bypass shall be submitted, at least 15 days in advance if possible, to the Department. No bypass of this type shall occur until permission has been obtained from the Department.

- H. **Upset Conditions.** An upset constitutes an affirmative defense to an action brought for noncompliance with technology-based permit effluent limitations if the requirements of the following paragraph are met. No determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is final administrative action subject to judicial review.

A permittee who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:

1. An upset occurred and the permittee can identify its cause(s);
2. The permitted facility was, at the time being, properly operated;
3. The permittee submitted notice of the upset as may be required under, "Immediate Notification" condition; and
4. The permittee complied with any remedial measures required under "Duty to Mitigate".

In any enforcement proceeding, the permittee seeking to establish the occurrence of an upset has the burden of proof.

- I. **Duty to Mitigate.** The permittee shall take all reasonable steps to minimize or prevent any discharge in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment. The permittee, at the Department's request, shall provide accelerated or additional monitoring as necessary to determine the nature and impact of any discharge.
- J. **Removed Materials.** Collected screenings, grit, solids, sludges, or other pollutants removed in the course of treatment shall be buried or disposed of in such a manner to prevent any pollutant from entering any waters of the state or creating a health hazard.
- K. **Right of Entry.** The permittee shall allow Department and EPA representatives, at reasonable times and upon the presentation of credentials if requested, to inspect the facilities resulting in discharge, monitoring equipment, to sample any discharges, and to have access to and copy any records required to be kept by this permit. For facilities which discharge to a municipal or other separate storm sewer, this shall also pertain to authorized representatives of the municipal operator or the separate storm sewer receiving the discharge.
- L. **Availability of Reports.** Except for data determined to be confidential under 40 CFR Part 2, all reports prepared in accordance with the terms of this permit shall be available for public inspection at the offices of the Department and EPA. As required by the Act, permit applications, permits, and effluent data shall not be considered confidential.
- M. **Transfers.** This permit is not transferable except upon the filing of a Statement of Acceptance by the new party and subsequent Department approval. The Department may require the new operator to file an NOI or apply for and obtain an individual NDPDES permit if deemed appropriate. The current permit holder should inform the new controller, operator, or owner of the existence of this permit and also notify the Department of the possible change.
- N. **New Limitations or Prohibitions.** The permittee shall comply with any effluent standards or prohibitions established under Section 306(a), Section 307(a), or Section 405 of the Act for any pollutant (toxic or conventional) present in the discharge or removed substances within the time identified in the regulations even if the permit has not yet been modified to incorporate the requirements.

- O. **Permit Actions.** This permit may be modified, revoked and reissued, or terminated for cause. Also, if there is evidence indicating potential or realized impacts on water quality due to any storm water discharge associated with industrial activity covered by this permit, the owner or operator of such discharge may be required to obtain an individual permit or coverage under an alternative general permit. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance does not stay any permit condition.

Any person covered by this general permit may request to be excluded from such coverage by either applying for an individual NDPDES permit or filing a Notice of Intent to be covered under an alternative NDPDES general permit.

When an individual NDPDES permit is issued to a person otherwise subject to this permit or the person is approved for coverage under an alternative NDPDES general permit, the applicability of this permit to the individual permittee is automatically terminated upon the effective date of the individual permit or the date of approval for coverage under the alternative general permit. When an individual NDPDES permit is denied to a person otherwise subject to this permit, or the person is denied for coverage under an alternative NDPDES general permit, the applicability of this permit remains in effect, unless otherwise specified by the Department.

- P. **Need to Halt or Reduce.** It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.
- Q. **State Laws.** Nothing in this permit shall be construed to preclude the institution of legal action or relieve the permittee from any responsibilities, liabilities, or penalties established pursuant to any applicable state law or regulation preserved under Section 510 of the Act.
- R. **Oil and Hazardous Substance Liability.** Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under Section 311 of the Act.
- S. **Property Rights.** The issuance of this permit does not convey any property rights of any sort, nor any exclusive privileges, nor does it authorize any injury to private property or any invasion of personal rights, nor any infringement of Federal, State or local laws or regulations.
- T. **Severability.** The provisions of this permit are severable, and if any provision of this permit or the application of any provision of this permit to any circumstance is held invalid, the application of such provision to other circumstances and the remainder of this permit shall not be affected thereby.

PART VIII - DEFINITIONS

"Best Management Practices" or "BMP". Best management practices means practices to prevent or reduce the pollution of the waters of the state, including schedules of activities, prohibitions of practices, and other management practice, and also includes treatment requirements, operating procedures and practices to control construction site runoff, spillage or leaks, sludge, or waste disposal or drainage from salt and other raw material storage.

"Common Plan Of Development Or Sale" means a contiguous area where multiple separate and distinct construction activities are planned to occur at different times on different schedules under one plan, e.g., a housing development of five 1/4 acre lots (40 CFR Sec. 122.26 (b)(15)(i)).

"Department" means the North Dakota Department of Health, Division of Water Quality.

"DMR" means Discharge Monitoring Report, which for the purpose of this permit is the annual report.

"EPA" means the U.S. Environmental Protection Agency.

"Expanded source of pollutants" means, 1) for a discharge affecting a listed outstanding state resource water, any changes in volume, quality, location, or any other manner that results in an increased loading of one or more pollutants after the effective date of the designation of the water body as described in NDAC 33-16-02; 2) for discharges affecting other waters of the state, any changes in volume, quality, location, or any other manner that results in increased loading of one or more pollutants that would have a significant permanent effects on the waterbody.

"General permit" means a permit issued under NDAC 33-16-01 to a category of permittees whose operations, emissions, activities, discharges, or facilities are the same or substantially similar.

"Maximum Extent Practicable" "MEP" is the statutory standard that establishes the level of pollutant reductions that an owner or operator of regulated MS4s must achieve. The USEPA has intentionally not provided a precise definition of MEP to allow maximum flexibility in MS4 permitting. The pollutant reductions that represent MEP may be different for each small MS4, given the unique local hydrologic and geologic concerns that may exist and the differing possible pollutant control strategies. Therefore, each permittee will determine appropriate BMPs to satisfy each of the six minimum control measures through an evaluative process. The USEPA envisions application of the MEP standard as an iterative process.

"Municipal separate storm sewer system" or "MS4" means a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains):

1. Owned or operated by a state, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to state law) having jurisdiction over disposal of sewage, industrial wastes, storm water, or other wastes, including special districts under state law such as a sewer district, flood control district or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management Agency under section 208 of the CWA that discharges to waters of the United States;
2. Designed or used for collecting or conveying storm water;
3. Which is not a combined sewer; and
4. Which is not part of a Publicly Owned Treatment Works (POTW) as defined at 40 CFR 122.2.

“New Development” means construction activities that create new impervious surface.

“New source of pollutants” 1) for outstanding state resource waters means a discharge that started after the effective date of the designation of an outstanding state resource water as described in NDAC 33-16-02; 2) for other waters means a discharge that started after the effective date of this permit.

“Newspaper” means a publication containing news of general interest (in the vicinity of the MS4). It can include other publications if the distribution includes the general population of potentially interested parties.

“Notice of Intent” as referenced in the USEPA documents is synonymous with the term “permit application” for the purposes of this permit.

“Other Regulatory Mechanism” means any legally enforceable document, such as a contract or other agreement that has penalties such as withholding payments, fines or other measures to prevent non compliance.

“Operator” means the person with primary operational control and legal responsibility for the municipal separate storm sewer system.

“Outfall” means the point where a municipal separate storm sewer system discharges from a pipe, ditch, or other discrete conveyance to receiving waters, or other municipal separate storm sewer systems. It does not include diffuse runoff or conveyances, which connect segments of the same stream or other water systems.

“Owner” means the person that owns the municipal separate storm sewer system.

“Person” means the state or any agency or institution thereof, any municipality, governmental subdivision, public or private corporation, individual, partnership, or other entity, including, but not limited to, association, commission or any interstate body, and includes any officer or governing or managing body of any municipality, governmental subdivision, or public or private corporation, or other entity.

“Physical alteration” means the dredging, filling, draining, or permanent inundating of a wetland. Restoring a degraded wetland by reestablishing its hydrology is not a physical alteration.

“Redevelopment” refers to alterations of a property that change the “footprint” of a site or building in such a way that results in the disturbance of equal to or greater than 1 acre of land. The term is not intended to include such activities as exterior remodeling, which would not be expected to cause adverse storm water quality impacts and offer no new opportunity for storm water controls.

“Small Municipal Separate Storm Sewer System” or “small MS4” means all separate storm sewers that are:

1. Owned or operated by the United States, a state, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to state law) having jurisdiction over disposal of sewage, industrial wastes, storm water, or other wastes, including special districts under state law such as a sewer district, flood control district or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under section 208 of the CWA that discharges to waters of the United States.

2. Not defined as “large” or “medium” municipal separate storm sewer systems pursuant to 40 CFR 122.26 paragraphs (b)(4) and (b)(7) of, or designated under paragraph (a)(1)(v).
3. This term includes systems similar to separate storm sewer systems in municipalities, such as systems at military bases, large hospital or prison complexes, and highways and other thoroughfares. The term does not include separate storm sewers in very discrete areas, such as individual buildings.

“Storm Water” means storm water runoff, snowmelt runoff, surface runoff and drainage.

“Storm water discharge associated with small construction activity” means the discharge of storm water from:

1. Construction activities including clearing, grading, and excavating that result in land disturbance of equal to or greater than one acre and less than five acres. Small construction activity also includes the disturbance of less than one acre of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb equal to or greater than one and less than five acres. Small construction activity does not include routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original purpose of the facility.
2. Any other construction activity designated by EPA or the Department, based on the potential for contribution to a violation of a water quality standard or for significant contribution of pollutants to waters of the state.

“Total Maximum Daily Load” is the process established by the USEPA for the allocation of pollutant loads, including storm water, to a particular water body or reach of a water body.

“Waters of the State” means any and all surface waters that are contained in or flow in or through the state of North Dakota as defined in NDCC 61-28-02. This definition includes all water courses, even if they are usually dry.

“You” means the owner, operator or permittee as appropriate.

“Vehicle Maintenance Facilities” means a facility engaged in activity that meets the description for storm water discharges associated with industrial activity from transportation facilities defined under 40 CFR 122.26(b)(14)(viii), excluding air transportation. The facilities are classified as Standard Industrial Classifications 40, 41, 42, 44, and 5171 which have vehicle maintenance shops or equipment cleaning operations. The definition applies only those portions of the facility that are either involved in vehicle maintenance (including vehicle rehabilitation, mechanical repairs, painting, fueling, and lubrication) or equipment cleaning operations.

“Wastewater treatment plants having a design capacity of 1.0 mgd or more” means a treatment works treating domestic sewage or any other sewage sludge or wastewater treatment device or system, used in the storage treatment, recycling, and reclamation of municipal or domestic sewage, including land dedicated to the disposal of sewage sludge that are located within the confines of the facility, with design flow of 1.0 mgd or more, or required to have an approved pretreatment program under 40 CFR 403. Not included are farm lands, domestic gardens or lands used for sludge management where sludge is beneficially reused and which are not physically located in the confines of the facility, or areas that are in compliance with 40 CFR 503.